

# HOUSE BILL No. 1149

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 8-1-2.

**Synopsis:** IURC merger and fining authority. Provides that a merger, consolidation, reorganization, or stock transaction involving an energy company may not occur without the approval of the utility regulatory commission (IURC) if the transaction will cause more than 51% of the company's voting stock to be held by different interests. Requires the IURC to approve the transaction unless the resulting entity will lack the capability to provide adequate and reliable service. Allows the IURC to impose a civil penalty of up to \$5,000 if a public utility providing energy services violates any: (1) utility law; or (2) rate or service requirement imposed by the IURC. Allows the IURC to impose an additional penalty of up to \$10,000 if the violation demonstrates a willful disregard by the public utility of its duty to remedy the violation. Specifies that a suit to recover a penalty imposed by the IURC shall be brought by the attorney general.

**Effective:** July 1, 2005.

**Lutz J**

January 6, 2005, read first time and referred to Committee on Utilities and Energy.

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Introduced

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## HOUSE BILL No. 1149

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 8-1-2-84.1 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2005]: **Sec. 84.1. (a) Notwithstanding sections 83 and 84 of this**  
4 **chapter, this section applies to a transaction involving a:**

5 (1) **merger, consolidation, reorganization, or union involving**  
6 **an energy company; or**

7 (2) **tender offer or contract for the purchase, acquisition,**  
8 **assignment, or transfer of stock of an energy company.**

9 (b) **As used in this section, "energy company" means an energy**  
10 **utility or an energy utility holding company.**

11 (c) **As used in this section, "energy utility" means an energy**  
12 **utility (as defined in IC 8-1-2.5-2) that provides retail energy**  
13 **service to more than forty thousand (40,000) retail electric or gas**  
14 **customers in Indiana.**

15 (d) **As used in this section, "energy utility holding company"**  
16 **means a corporation, company, partnership, or limited liability**  
17 **company that wholly owns an energy utility.**

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(e) As used in this section, "person" means an individual, a corporation, a partnership, a limited liability company, an association, or another entity organized under the laws of any state. The term includes state, local, and federal agencies.

(f) As used in this section, "retail energy service" has the meaning set forth in IC 8-1-2.5-3, regardless of whether the service is provided under IC 8-1-2.5 or another provision of this article.

(g) Without the prior approval of the commission, a person may not, except in an intracorporate transaction, consummate a transaction described in subsection (a) that causes more than fifty-one percent (51%) of the then outstanding shares of the energy company's stock entitled to vote generally in the election of the energy company's directors to be beneficially held, directly or indirectly, immediately after the transaction by persons that are different from the persons that beneficially held, directly or indirectly, the shares of the energy company's stock immediately before the transaction.

(h) Unless the commission finds, after notice and hearing, by clear and convincing evidence, that the record demonstrates that the energy utility affected by the transaction will lack the financial, managerial, or technical capabilities to provide adequate and reliable retail energy service, the commission shall approve a transaction subject to this section.

(i) The commission shall enter an order either approving or disapproving a transaction subject to this section not later than one hundred twenty (120) days after the date a person files an application with the commission for approval of the proposed transaction. If the commission fails to issue an order within the one hundred twenty (120) day period allowed the commission under this subsection, the transaction shall be considered approved as of the first day following the one hundred twenty (120) day period described in this subsection. After the expiration of the one hundred twenty (120) day period described in this subsection, the commission may not take action in any state or federal administrative or judicial proceeding to oppose the transaction.

(j) If commission approval of a transaction involving a:

(1) merger, consolidation, reorganization, or union involving an energy company; or

(2) tender offer or contract for the purchase, acquisition, assignment, or transfer of stock of an energy company;

is not required under this section, commission approval of the transaction is not required under any other provision of this title.

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(k) Nothing in this chapter:

(1) prevents the holding of an energy company's stock lawfully acquired before July 1, 2005; or

(2) prohibits a merger, consolidation, reorganization, or union involving an energy company if the transaction was lawfully initiated before July 1, 2005.

SECTION 2. IC 8-1-2-109 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 109. (a) This section does not apply to:

(1) a public utility that owns, operates, manages, or controls any plant or equipment within Indiana for the production, transmission, delivery, or furnishing of heat, light, or power; or

(2) a corporation organized or operating under IC 8-1-13.

(b) A public utility that violates this chapter, or fails to perform any duty enjoined upon it, for which a penalty is not otherwise provided, commits a Class B infraction.

SECTION 3. IC 8-1-2-109.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 109.1. (a) This section does not apply when a public utility's violation or failure to comply under subsection (d) is caused by circumstances beyond the control of the public utility, including any of the following:

(1) Customer provided equipment.

(2) A negligent act or omission of a customer.

(3) An unavoidable casualty.

(4) An act of God.

(b) As used in this section, "public utility" means every corporation, company, partnership, limited liability company, individual, or association of individuals, their lessees, trustees, or receivers appointed by a court, that own, operate, manage, or control any plant or equipment in Indiana for the production, transmission, delivery, or furnishing of heat, light, or power. The term includes a department of public utilities created under IC 8-1-11.1. The term does not include:

(1) a municipality or political subdivision; or

(2) a corporation organized or operating under IC 8-1-13.

(c) A public utility and every officer of a public utility shall comply with every order or rule of the commission made under the authority of this chapter.

(d) Except as otherwise provided in this chapter, if the commission finds, after notice and hearing, that a public utility has

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violated this chapter or failed after due notice to comply with:

- (1) a standard of service established by commission rule; or
- (2) a rate or service requirement of a final and unappealable order of the commission;

the commission may order the public utility to pay a civil penalty of not more than five thousand dollars (\$5,000) for each violation or failure to comply.

(e) Notwithstanding subsection (d), if the commission finds after notice and hearing that the public utility's violation or failure to comply demonstrates, by a continuing pattern of conduct, a willful disregard by the public utility of its obligation to remedy the violation or failure to comply found under subsection (d), the commission may impose an additional civil penalty of not more than ten thousand dollars (\$10,000) for each violation or failure to comply.

(f) The commission shall consider the following when determining the appropriateness of the imposition or amount of a civil penalty:

- (1) The size of the public utility.
- (2) The gravity of the violation or failure to comply.
- (3) The good faith of the public utility in attempting to remedy the violation or failure to comply or achieve compliance after receiving notification of the violation or failure.
- (4) The effect of the civil penalty on the public utility's financial ability to provide adequate and reliable service.
- (5) If the public utility is a nonprofit company:
  - (A) the effect of the penalty on the company's members and their capitalization of the company; and
  - (B) whether the act or omission causing the violation or failure to comply had been approved or requested by the company's members.

In the order imposing the civil penalty, the commission shall make specific findings with respect to the factors described in subdivisions (1) through (5).

(g) A public utility may not be subject to both a civil penalty under this section and a negotiated penalty under a commission approved settlement agreement for the same violation or failure to comply. If the commission has approved a settlement agreement that includes penalties or remedies for noncompliance with specific provisions of the settlement agreement, the penalties provided in this section do not apply to those instances of noncompliance during the life of the settlement agreement.

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(h) Notwithstanding section 112 of this chapter, the civil penalties provided for in this section for each violation or failure to comply by a public utility may not be multiplied or increased because of the number of customers affected or the length of time service is affected. Only one (1) violation or failure to comply per day may be attributed to a public utility as a result of a particular condition, system outage, storm, act, omission, event, decision, or other cause occurring on that day.

(i) Civil penalties recovered under this section shall be paid into the state general fund.

(j) Upon the motion of a public utility, the commission shall stay the effect or enforcement of an order under this section pending an appeal, if the public utility posts a bond that complies with Rule 18 of the Indiana Rules of Appellate Procedure.

SECTION 4. IC 8-1-2-115 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 115. The commission shall inquire into any neglect or violation of the statutes of this state or the ordinances of any city or town by any public utility doing business therein, or by the officers, agents, or employees thereof, or by any person operating the plant of any public utility, and shall have the power, and it shall be ~~its~~ **the commission's** duty to enforce the provisions of this chapter, as well as all other laws, relating to public utilities. Any forfeiture or penalty provided in this chapter shall be recovered, and suit therein shall be brought in the name of the state of Indiana ~~in the circuit or superior court where the public utility has its principal place of business~~ **by the attorney general in a court that has jurisdiction**. Complaint for the collection of any such forfeiture may be made by the commission or any member thereof, and, when so made, the action so commenced shall be prosecuted by the **attorney general**. ~~counsel~~.

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